[Sri T. S. Avinashilingam Chettiyar] [25th November 1948

"I am very grateful for the suggestions made and the support given."

The motion was put and carried.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14-A, 15, 16, 17, 18 and 1 and the Preamble were put one by one and carried.

THE HON. SRI T. S. AVINASHILINGAM CHETTIYAR :—" Sir, I move that the Bill be passed into law."

The motion was put and carried and the Bill was passed into law.

(8) THE MADRAS ALIYASANTANA BILL, 1947 (L.C. BILL No. 1 OF 1948).

* THE HON. SRI K. MADHAVA MENON :—" Sir, I present the report of the Joint Select Committee on the Madras Aliyasantana Bill, 1947 (L.C. Bill No. 1 of 1948) and move that the Bill as reported by the Joint Select Committee be taken into consideration.

" I hops that the contagion of the good fortune of my Hon. Colleague will spread to me with reference to this Bill. (Laughter.) When I moved a motion in this House for constituting a Joint Select Committee on this Bill, I gave the reason why the Government took up this legislation. It has been suggested that it is expedient to define and amend in certain respects the law relating to marriage, maintenance, guardianship, intestate succession, family management and partition applicable to persons governed by the Aliyasantana Law of Inheritance. This Bill is more or less based on the Malabar Marumakkattayam Act passed by the Madras Legislature in 1933. There was no law relating to marriage, intestate succession or partition and it has worked much havoc. Marriages in the community are not held strictly valid in law. So the community has been asking for some sort of legislation. At the same time, there is a bit of conservatism in the community. This Bill does not go as far as the Marumakkattayam Act because the people in South Kanara to whom it applies do not want all the provisions of that Act to be incorporated. The Joint Select Committee held sittings in Mangalore, Udipi and other places and examined a number of witnesses. We had the benefit of the advice and experience of Mr. Karanth, who has been a practising lawyer in South Kanara, and also the advice of other lawyers there. The community as a whole welcome this Bill. In the matter of partition, the members of the community to which this Bill applies want that partition should be *per stirpes* and not *per capita*. I visited a hostel in South Kanara and even the young students there wanted that partition should be *per stirpes* and not *per capita*."

MR. PRESIDENT :—" What is the reason?"

* THE HON. SRI K. MADHAVA MENON :—" The reason seems to be that women will be helpless if the partition is *per*

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capita. Under the Aliyasantana Law, the man has only life interest in the estate. After his death, the property descends to his sister's son. The community does not want to change this tradition. We have tried to liberalise to the extent the community will allow us to go. In fact, in the Marumakkattayam Bill of 1933 the Aliyasantana people also were included. There was so much opposition that it was given up. Later on Mr. A. B. Shetty sponsored this Bill. Public opinion was collected on it and published. There was an Aliyasantana People's Reform Conference. That conference suggested the principles on which legislation should be undertaken. We have prepared this Bill on the basis of those principles. In some respects it is not as advanced as one would wish it to be. But it will take time for public opinion among the community to grow. But the general approval of the community as a whole is there for this Bill."

Dr. V. K. JOHN :—" So far as this Bill is concerned, good luck will attend on the Hon. Mr. Madhava Menon. I find this is one of the few Bills which are well-worded and well-arranged. Probably Mr. Madhava Menon who was the Chairman of the Select Committee took particular care to study every aspect and consult the persons affected by the Bill. It was a good thing that the Select Committee visited the places where the community to whom this Bill applies lives and took evidence. I repeat that as far as I can see this is a very well-worded piece of legislation. But my regret is this. Instead of having a common personal law for all Indians throughout the length and breadth of the country, we are enacting a law for a very small community in the West Coast. Probably we might have waited. In a year or two people will easily entertain the opinion that there should be one common personal law for the whole country regardless of community, caste or religion. But the law cannot be far in advance of the opinion of the people. The law depends upon ideas of right and wrong which the people hold at a particular time. If the matter is left to me, I would not have clause 4 (1) (ii) which says that the conjugal union of an Aliyasantana female with a male not belonging to such community and whether governed by the Aliyasantana Law or not, except a Hindu or Jain shall not be a legal marriage. I cannot see why an Aliyasantana female should not marry a Muslim or Christian. Such marriages may take place hereafter."

Mr. PRESIDENT :—" But a Christian is not prevented from marrying an Aliyasantana female."

Dr. V. K. JOHN :—"I think the law must provide both ways.

" What I am very much pleased with in this Bill is the saving clause 39. From a lawyer's or jurist's point of view, this is very important, although it is put down as the last clause. What really happens is that codification makes the law lose its flexibility. Judges with conservative instinct are not willing to interpret the

law in accordance with the growing opinion of the people. I am very glad that this clause has been included and the credit for it goes to the Hon. Minister. It says that nothing contained in this Act shall affect any rule of Aliyasantana Law except to the extent *expressly* laid down. By implication you cannot bring in something. Always custom and usage grow according to the growing opinion of the people. I hope that courts will interpret the provisions of law in a manner that will be acceptable to the growing opinion of the community as a whole. Before I sit down, may I express the hope that this Act and the other Acts dealing with the personal law of particular communities—I am speaking not about this province only but about the whole country—will all be repealed and that, instead there will be one law which will bind everybody whatever may be his community, caste, religion or place of residence.''

4-30 p.m. * THE HON. SRI K. MADHAVA MENON :—'' Sir, the desire expressed by the hon. Leader of the Opposition is already contained in the draft Hindu Code which is before a Select Committee of the Central Legislature. When it is passed into law, it will apply to all Hindus. It will repeal all Acts on this subject including the Marumakkattayam Act. But I will be sorry for the repeal of the Marumakkattayam Act, because it is more advanced than the Hindu Code.

'' Now, Sir, section 4 of this Bill declares that the union of an Aliyasantana female with a male not belonging to such community and whether governed by the Aliyasantana Law or not, but being a Hindu or Jain shall be deemed for all purposes to be a legal marriage, while the provisions of the Malabar Marumakkattayam Act go even farther than that. It was thought that this provision was rather too far-reaching and so the original Bill did not contain this provision. People in South Kanara who are governed by the Aliyasantana Law were very much against it, and it required considerable pursuasion on the part of the members of the Select Committee who went into the matter to make those people agree even to a provision of this sort.

'' Sir, I thank Dr. John for the suggestions he has made which will be considered when the time comes, but now I hope that this House will accept the motion I have made.''

MR. PRESIDENT :—'' The motion is that the Bill to define and amend in certain respects the law relating to marriage, maintenance, guardianship, intestate succession, family management and partition applicable to persons governed by the Aliyasantana Law of Inheritance, be taken into consideration.''

The motion was carried.

The Bill was then taken up clause by clause.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16; 17; 18, 19, 20, 21, 22, 23, 24 and 25 were put separately one by one and carried.

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Clause 26.

* THE HON. SRI K. MADHAVA MENON :—" Mr. President, Sir, I beg to move that in clause 26,—

' *In sub-clause* (2), for " *clauses* (*i*), (*iii*), (*v*) *and* (*vi*) *of section* 20," substitute " *clauses* (*i*), (*iii*), (*iv*), (*v*) *and* (*vi*) *of section* 20 ".'

" Sir, there was a clerical mistake in sub-clause (2) of this clause with regard to the references to certain sections of the Bill and hence this amendment has to be brought in, and I hope it will be accepted by the House."

MR. PRESIDENT :—" The question is—

' *In sub-clause* (2) *of clause* 26, for " *clauses* (*i*), (*iii*), (*v*) *and* (*vi*) *of section* 20," substitute " *clauses* (*i*), (*iii*), (*iv*), (*v*) *and* (*vi*) *of section* 20 ".' "

The amendment was carried.

Clause 26 as amended was put and carried.

Clauses 27, 28, 29, 30, 31, 32, 33, 34 and 35 were put one by one and carried.

Clause 36.

* THE HON. SRI K. MADHAVA MENON :—" Sir, I beg to move the following amendment standing in my name :—

' For *the first paragraph of sub-clause* (2) (*a*), substitute *the following* :—

" (*a*) *If on the date on which a partition is claimed, any of the members of the kutumba who are nearest in degree to their common ancestress is removed four degrees or more from such ancestress, then, the division shall be effected in the following manner* :—".

For *sub-clause* (2) (*e*) *and* (2) (*f*), substitute *the following* :—

" (*e*) *The provisions of clauses* (*a*) *to* (*d*) *shall apply only to partitions claimed before the expiry of a period of fifteen years from the commencement of this Act.*

(*f*) *In a partition of a kutumba claimed after the expiry of the period aforesaid, a kavaru shall be allotted such share as would fall to it if a division of the kutumba properties were made* per stirpes *among all the kavarus.*"

At the end of sub-clause (2), add *the following Explantion* :—

" *Explanation.*—*For the purposes of this sub-section, the date on which a partition is claimed shall be*—

(*a*) *where the claim is made by a suit for partition, the date of the institution of the suit* (*whether the suit is prosecuted or not*) ; *and*

(*b*) *where the claim is made otherwise than by a suit, the date on which such claim is made.*"

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For *sub-clause* (6), substitute *the following* :—

" (6) *A registered family settlement (by whatever name called) or an award, to which all the major members of a kutumba are parties and under which the whole of the kutumba properties have been or were intended to be distributed, or purport to have been distributed, among all the kavarus of the kutumba for their separate and absolute enjoyment in perpetuity, shall be deemed to be a partition of the kutumba properties notwithstanding any terms to the contrary in such settlement or award* ".'

" Sir, here also certain mistakes have crept in, which were noticed by my hon. Friend Mr. Karanth who informed us about them and wanted us to correct these mistakes and hence this amendment, Sir."

The amendment was put and carried.

Clause 36 as amended was put and carried.

Clauses 37, 38 and 39 were put one by one and carried.

Clause 1 and the Preamble were put separately and carried.

* THE HON. SRI K. MADHAVA MENON :—" Sir, I now move the Bill be passed into law. In this connexion I may state, Sir, that the same thing happened in the case of the Weights and Measures Bill, which was also introduced originally in this House and even though we thought we could accept any amendments in this House, so that it may not be delayed, yet no amendments were proposed."

MR. PRESIDENT :—" The question is—

' That the Bill to define and amend in certain respects the law relating to marriage, maintenance, guardianship, intestate succession, family management and partition applicable to persons governed by the Aliyasantana Law of Inheritance, be passed into law.' "

The motion was carried and the Bill was passed into law.

MR. PRESIDENT :—" I hope that when the Bill goes to the other House and if perhaps any amendments are proposed, the Government may either accept them or reject them, and if the Government accept them, this Bill will come back to this House. In either case, this House will be gratified." (Laughter.)

DR. V. K. JOHN :—" I hope, Sir, that all Bills in future will first be introduced in this House."

MR. PRESIDENT :—" At any rate a fair number of Bills may be introduced. That will remove this kind of feeling. Now we shall proceed to the next subject in the Agenda, viz., the Government Resolution."